



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

WASTE MANAGEMENT BOARD

ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

FLINTCO, INC d/b/a

CNI CONSTRUCTION, LLC / FLINTCO, INC., A JOINT VENTURE

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Flintco, Inc., d/b/a "CNI Construction LLC / Flintco Inc., A Joint Venture", for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Flintco" means Flintco, Inc., a corporation certified to do business in Virginia, and includes the contractual agreement between Flintco, Inc. and CNI

Construction, LLC known as "CNI Construction, LLC / Flintco, Inc., A Joint Venture", and its affiliates partners, subsidiaries, and parents.

7. "Facility" means Fort Lee Building 7008 Motor Pool Site, located at the intersection of 11th Street and Quartermaster Road in Fort Lee, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VHWMR" means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. "CNI Construction, LLC and Flintco, Inc., A Joint Venture" is a contractual arrangement between CNI Construction LLC and Flintco, Inc. Although CNI Construction, LLC ("CNI") nominally appears to be a limited liability corporation, the corporation has not registered with the Virginia State Corporation Commission. Accordingly, the Department asserts that Flintco, Inc. is doing business as "CNI Construction LLC/Flintco, Inc., A Joint Venture" and shall be referred to as "Flintco" in this Consent Order.
2. Flintco was contracted to perform the demolition of and debris removal from the Building 7008 Motor Pool Site, located at the intersection of 11th Street and Quartermaster Road, in Fort Lee, Virginia ("Facility"). Flintco was therefore the "operator" of the demolition project, as that term is defined in 40 CFR §260.10 and incorporated by 9 VAC 20-60-260.
3. Demolition of the Facility began on July 8, 2005 and ended on July 14, 2005. On July 11, 12, and 14, 2005, a cumulative total of 425,954 pounds of resulting demolition debris was hauled to a RCRA Subtitle D Landfill off of the site.
4. On July 14, 2005, prior to that day's debris waste shipment, an environmental consultant sampled the remaining demolition debris at the Facility. Thirteen of the fifteen samples from the demolition debris contained concentrations of lead in exceedence of 5 mg/kg, which is the maximum concentration of lead used to determine the toxicity characteristic, and is defined by 40 CFR §261.24(b) (Table 1). Flintco received a copy of the analytical results on July 18, 2005, after the entire quantity of demolition debris was hauled to the RCRA Subtitle D Landfill.
5. The analytical results indicate that the demolition debris may have constituted "hazardous waste", as that term is defined by 40 CFR §260.10 and §261.3(a)(2)(i) and incorporated by 9 VAC 260-60-260 and 261.

6. Flintco asserts that the samples taken were not representative of all of the demolition debris hauled off-site for disposal, and that more representative samples would have shown that the demolition debris was not hazardous. No information conclusively supporting this assertion was provided to the Department.
7. Flintco notified the U.S. Army Corps of Engineers ("Corps") of the analytical results on August 10, 2005. The Corps notified Fort Lee on August 12, 2005 and Fort Lee notified the Department on August 15, 2005, by phone and by facsimile.
8. Had the debris waste been identified as hazardous waste prior to disposal, Flintco may have been subject to Generator Requirements found in 40 CFR §262, Land Disposal Restrictions found in 40 CFR §268, and State-specific restrictions, including 9 VAC 20-60-262.6.
9. Flintco did not first determine if the waste was hazardous and did not then refer to parts 261, 264, 265, 266, 268, and 268 for possible exclusions or restrictions pertaining to management of the specific waste, as required by 40 CFR §262.11 and incorporated by 9 VAC 20-60-262.
10. On November 7, 2005, the Department met with representatives of Flintco, the Corps, and Fort Lee to discuss the issues described above.
11. On December 8, 2005, the Department issued Notice of Violation (NOV) No. 2005-02-PRO-602 for the violation described in Paragraph 9, above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders Flintco, and Flintco voluntarily agrees to pay a civil charge of \$5,050 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Flintco shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Flintco for good cause shown by Flintco, or on its own motion after notice and opportunity to be heard.


2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Flintco by DEQ on December 8, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Flintco admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Flintco consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Flintco declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Flintco to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Flintco shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Flintco shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Flintco shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Flintco. Notwithstanding the foregoing, Flintco agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Flintco. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Flintco from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Flintco voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2006.


David K. Paylor, Director
Department of Environmental Quality

Flintco voluntarily agrees to the issuance of this Order.

Date: 2.9.06

By: 

State/Commonwealth of _____
City/County of _____

The foregoing document was signed and acknowledged before me this 9 day of Feb., 2006, by Mark A. Grimes, who is
(Name)

S.R.V.P. of Flintco, on behalf of the Corporation.
(Title)

Margi Allen
Notary Public

My commission expires: 9-9-06

